

STATE OF MICHIGAN  
COURT OF APPEALS

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VICTORIA FRANCISCO GRUSKIN,

Plaintiff/Counterdefendant-  
Appellant,

v

MICHAEL L. GRUSKIN,

Defendant/Counterplaintiff-  
Appellee.

UNPUBLISHED

June 3, 2003

No. 235397

Oakland Circuit Court

Family Division

LC No. 99-624800-DM

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Before: Murray, P.J., and Neff and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce and raises six issues on appeal. We affirm.

The parties married on March 29, 1986, and have three minor children. Plaintiff filed a complaint for separate maintenance on July 30, 1999. Defendant filed a counterclaim for divorce on August 11, 1999. The trial court awarded plaintiff physical custody of the minor children and ordered defendant to pay child support. The trial court equally divided the marital property, which totaled over \$1.2 million, between the parties and awarded plaintiff spousal support for eight years. The trial court also awarded defendant \$20,000 in attorney fees.

I.

Plaintiff first claims that the trial court made clearly erroneous findings of fact regarding several of the relevant property division factors. We disagree.

We review the trial court's factual findings for clear error. *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997), citing *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). A factual finding is clearly erroneous if, after a review of the entire record, we are left with the definite and firm conviction that a mistake has been made. *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002). If the factual findings are upheld, we then determine whether the ultimate dispositional ruling was fair and equitable in light of the facts. *Byington, supra*. Reversal of the ultimate disposition of the case is proper only if we are left with the firm conviction that the distribution was inequitable. *Id.*

“The goal of the court when apportioning a marital estate is to reach an equitable division in light of all the circumstances.” *Byington, supra* at 114, citing *Ackerman v Ackerman*, 163 Mich App 796, 807; 414 NW2d 919 (1987). “When dividing the estate, the court should consider the duration of the marriage, the contribution of each party to the marital estate, each party’s station in life, each party’s earning ability, each party’s age, health, and needs, fault or past misconduct, and any other equitable circumstances.” *Byington, supra* at 115, citing *Sparks v Sparks*, 440 Mich 141, 158-160; 485 NW2d 893 (1992). “The significance of each of these factors will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise.” *Id.*

Plaintiff first contends that the trial court clearly erred in finding that plaintiff was in good health when she is unable to work due to her disability. We disagree and find that the evidence supported the trial court’s finding. Although plaintiff’s testimony, that she uses a cane to walk up and down stairs, has problems sitting and standing for long periods of time, is unable to walk long distances, and driving is painful, supported plaintiff’s claim that she was disabled due to a back injury, the testimony also supported a finding that plaintiff’s condition did not immobilize her such that she was no longer able to work. Defendant testified that plaintiff worked as a real estate agent while on disability, worked as a builder, and was involved in real estate transactions every year throughout the marriage. Moreover, there was evidence that plaintiff was able to do physical activities after her last surgery. Based on the record, we are not left with a definite and firm conviction that the trial court made a mistake in finding plaintiff in good health. *McNamara, supra*.

Plaintiff next contends that the trial court clearly erred by failing to find that the life status of the parties significantly differed because her employment outlook is dim or limited, while defendant has a secure job. We disagree. Contrary to plaintiff’s contention, the trial court found that plaintiff’s employment prospects may be hindered. The testimony that plaintiff worked throughout the marriage in real estate and as a builder, but currently did not hold a real estate or builder’s license, supported the trial court’s finding and, thus, we are not left with a definite and firm conviction that a mistake has been made. *McNamara, supra*.

Plaintiff next contends that the trial court clearly erred in finding that defendant was not at greater fault for the breakdown of the marriage. We disagree and find that the evidence supported the trial court’s finding that both parties contributed to the breakdown of the marriage and that the circumstances surrounding the breakdown did not establish greater fault by either party. Plaintiff’s testimony that defendant was unfaithful, physically abused her, and abused alcohol supports the trial court’s finding that defendant contributed to the breakdown of the marriage. However, defendant’s testimony that plaintiff got “too intoxicated,” argued, threw things at him, hit him, always yelled and screamed at him about doing something wrong, and “barraged” him about not making enough money, supports the trial court’s finding that plaintiff also contributed to the breakdown of the marriage. Further, defendant denied plaintiff’s allegations. Given the conflicting testimony, we find that the trial court did not clearly err in concluding that the circumstances did not establish greater fault by one party. *McNamara, supra*. The trial court is in the best position to judge the credibility of witnesses. *Draggou v Draggou*, 223 Mich App 415, 429; 566 NW2d 642 (1997), citing *Thames v Thames*, 191 Mich App 299, 302; 477 NW2d 496 (1991).

## II.

Plaintiff's second claim is that the trial court erred in failing to make specific findings of fact on relevant property division factors, including the contributions of the parties to the marital estate, the necessities and circumstances of the parties, and general equitable principles. We disagree and find that the trial court's findings were adequate.

Where a factor is relevant to the value of the property or the needs of the parties, the trial court must make a specific finding of fact regarding the factor. *Sparks, supra* at 159. Further, in a bench trial the judge is required to find the facts specifically and state separately its conclusions of law. MCR 2.517(A)(1). Findings are sufficient if brief, definite, and pertinent, without over-elaboration of detail or particularization of facts. MCR 2.517(A)(2); *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 889 (1994) (Brickley, J.), after remand 229 Mich App 19; 581 NW2d 11 (1998). Indeed, a trial court's findings are sufficient if "it appears that the trial court was aware of the issues in the case and correctly applied the law." *Triple E Produce Corp v Mastornardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995).

Plaintiff first contends that the trial court failed to consider her contributions to the marital estate. We disagree.

The parties' contributions to the marital estate was a relevant factor in this case because plaintiff claimed that the parties should be restored to their premarital positions, creating a dispute regarding the value of the property to be included in the marital estate, and thus, the trial court was required to make specific factual findings regarding the parties' contributions to the marital estate. *Sparks, supra*. The trial court's opinion is replete with numerous examples indicating that the trial court considered plaintiff's contributions to the marital estate, showing the court's awareness of the issue.<sup>1</sup> The trial court's factual findings are sufficient so long as it appears that the court was aware of the issues in the case and properly applied the law. *Triple E, supra*. It is evident that the trial court considered the contribution of the parties to the marital estate, but ruled it impossible to divide the property on that basis due to the commingling of the parties' assets throughout the marriage. Accordingly, we find that the trial court properly

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<sup>1</sup> The record indicates that the trial court considered the parties contributions to the marital estate and made such findings. First, the trial court made findings concerning plaintiff's monetary contributions to the marital estate. The trial court found that the parties were involved in several real estate developments and that defendant acted as general partner, while plaintiff assumed some management responsibilities. The trial court further found that the parties bought and sold their various investment interests using proceeds from earlier investments, settlement funds from plaintiff's accidents, employment earnings, or other jointly or individually held monies. The court found that the parties began investing in real estate together before the marriage and that the profits were commingled and used for living expenses and reinvestment, concluding that it was impossible to trace either party's premarital investment in the holdings. The court further recognized that plaintiff testified that she used approximately \$34,362 of her separate money for the down payment on the marital home and that she used \$20,000 of her own money to purchase the BMW, but concluded based on conflicting evidence presented by defendant, that the assets were marital assets. The court also found that plaintiff contributed the 1974 Jaguar to the marital estate, which she purchased for \$6,454, and that the parties used \$25,000 in marital funds to maintain and improve it, and the court included only the increase in the value of the Jaguar in the marital estate. The court also found that plaintiff used her disability benefits to support the family.

considered and made specific findings of fact concerning the contribution of the parties to the marital estate. *Sparks, supra* at 159-160.

Plaintiff next contends that the trial court failed to make a finding of fact regarding the necessities and circumstances of the parties. We disagree. The needs and circumstances of the parties was a relevant factor in this case because plaintiff was unemployed, and thus, the trial court was required to consider and make a specific finding of fact regarding the factor. *Sparks, supra* at 159.

The record indicates that the trial court considered and made findings of fact concerning plaintiff's needs and circumstances. The court found that plaintiff is currently unemployed, but that there is no evidence that plaintiff is unable to work. Further, the court, in determining whether spousal support should be awarded, recognized that plaintiff testified that she is unable to work due to her medical condition, but concluded that plaintiff failed to provide documentation of her inability to work or the cost of her medical needs and that plaintiff's claim is "incredible." The court concluded that plaintiff has the ability to be employed, at least at the minimum wage. Also, in determining whether spousal support should be awarded, the court considered that plaintiff will receive interest income and rental income from property awarded in the property division. Therefore, it is evident that the trial court considered and made factual findings regarding plaintiff's needs and circumstances. *Sparks, supra* at 159-160.

Plaintiff argues that the court's failure to consider plaintiff's needs and circumstances is evident by the fact that the trial court awarded plaintiff the marital home with mortgage payments of \$2,947.30 per month, while awarding her only \$2,200 in child support and spousal support, leaving a \$747.30 monthly deficit. However, the court also found that plaintiff is capable of employment at least at the minimum wage, which would result in income of \$10,712 annually or \$892.67 per month. This additional income would eliminate any alleged deficit. Plaintiff also failed to note on appeal that the trial court awarded her marital assets with value in excess of \$600,000 and stock as her separate property. Therefore, contrary to plaintiff's argument, we find that the trial court's award did not reflect a lack of consideration to plaintiff's needs and circumstances. *Sparks, supra*. Further, the factual findings are sufficient because it is apparent that the trial court was aware of plaintiff's needs and circumstances and correctly applied the law. *Triple E, supra*.

Plaintiff finally contends that the trial court failed to make a finding of fact regarding the principles of equity weighing in plaintiff's favor. The trial court should consider other principles of equity if relevant to the determination of the appropriate property division. *Sparks, supra* at 158-160; *Byington, supra*. Plaintiff argues that the court, in consideration of equitable principles, should have awarded her a greater share of the marital property to compensate for the loss of her separate property in the divorce. Plaintiff's equity argument, however, ignores the fact that her own actions during discovery led to the trial court's ruling that her alleged separate assets were marital property.

The trial court barred introduction of any evidence that plaintiff failed to disclose in response to defendant's interrogatories because of *her* failure to comply with the discovery requests and the court orders. The trial court barred admission of documentation and testimony

that plaintiff owned several stocks and held an IRA before the marriage. In light of the trial court's discovery sanctions and this Court's affirmation of those sanctions,<sup>2</sup> the trial court should not, in equity, be required to increase plaintiff's share of the marital assets to compensate for the loss of her alleged separate property caused by her own failure to comply during discovery. Thus, the loss of her separate property was not a relevant consideration in the determination of a fair and equitable division. Accordingly, it was not necessary for the trial court to make such findings. *Sparks, supra* at 159.

### III.

Plaintiff's third claim is that the trial court clearly erred by including her premarital property in the marital estate. We disagree.

"The distribution of property in a divorce is controlled by statute." *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997), citing MCL 552.1 *et seq.* "In granting a divorce, the court may divide all property that came 'to either party by reason of the marriage.'" *Id.*, citing MCL 552.19. "When apportioning marital property, the court must strive for an equitable division of increases in marital assets 'that may have occurred between the *beginning* and the end of the marriage'" *Id.* (emphasis in original), citing *Bone v Bone*, 148 Mich App 834, 838; 385 NW2d 706 (1986). "Thus, the trial court's first consideration when dividing property in divorce proceedings is the determination of marital and separate assets." *Id.* at 493-494, citing *Byington, supra* at 114 n 4. "Generally, the marital estate is divided between the parties, and each party takes away from the marriage that party's own separate estate with no invasion by the other party." *Id.* at 494. "However, a spouse's separate estate can be opened for redistribution when one of two statutorily created exceptions is met." *Id.*, citing MCL 552.23 and MCL 552.401. MCL 552.23 "permits invasion of the separate estates if after division of the marital assets 'the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party.'" *Id.*, quoting MCL 552.23(1). MCL 552.401 permits invasion of the separate assets where the other spouse "contributed to the acquisition, improvement, or accumulation of the property." *Id.* at 494-495, quoting MCL 552.401.

Plaintiff first contends that the trial court clearly erred by including in the marital estate her premarital investment she made to AFDIG. We disagree. Although it is undisputed that plaintiff invested \$30,000 of her premarital funds in AFDIG, her interest in AFDIG was subsequently converted to joint property and commingled with defendant's income to jointly reinvest in other real estate developments during the marriage. Therefore, we are not left with a definite and firm conviction that the trial court made a mistake. *McNamara, supra*.

Regardless, even if plaintiff's premarital investment in AFDIG was treated as separate property, we find that it falls under the statutory exception that permits invasion of a spouse's separate estate where the other spouse "contributed to the acquisition, improvement, or accumulation of the property." MCL 552.401; *Reeves, supra* at 494-495. In this case, the

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<sup>2</sup> *Gruskin v Gruskin*, unpublished orders of the Court of Appeals, entered May 12, 2000, and May 26, 2000 (Docket No. 227010).

evidence indicates that defendant, as AFDIG's general partner, actively participated and contributed to the acquisition, improvement, or accumulation of the property. *Id.*

Plaintiff next contends that the trial court clearly erred by including in the marital estate her premarital shares of stock in PepsiCo, Exxon, and Tricon that she jointly held with her mother and individually. We disagree. Given the discovery sanctions imposed against plaintiff by the court, and plaintiff's inability to recall when she acquired the shares of stock, we cannot say with a definite and firm conviction that the trial court erred by including the stock in the marital estate. *McNamara, supra*.

Consistent with the discovery sanction imposed by the court, plaintiff was barred from admitting evidence establishing that any shares of PepsiCo stock above the number of shares she disclosed during discovery were separate property. Given the discovery sanctions imposed by the court, we fail to find clear error in the trial court's determination that the remaining shares of PepsiCo were marital property. Given plaintiff's refusal to comply with the discovery orders during trial, she should not "be heard to complain that the trial court committed error in its factual findings when [s]he was the party responsible for the alleged errors." *Draggoot, supra*.

Further, we find that the record supported the trial court's finding that the shares of Exxon stock were marital property. First, the testimony was not uncontroverted regarding whether plaintiff acquired the Exxon stock before the marriage. Second, plaintiff testified that she sold all the certificated shares of Exxon she originally held during the marriage and that the remaining shares resulted from dividend reinvestment. Third, the evidence indicated that the parties jointly paid tax on the dividends, and therefore, the shares of Exxon did not appreciate solely because of passive investment during the marriage. See *Reeves, supra* at 497. See also *Dart v Dart*, 460 Mich 573, 585 n 6; 597 NW2d 82 (1999). Therefore, we find that the trial court did not clearly err in determining that the shares of Exxon were marital property. *Id.* at 182-183.

Plaintiff also briefly contends that the trial court erred by including in the marital estate the stock she held jointly with her mother because the stock was held in joint tenancy. We disagree. "Generally a court has no authority to adjudicate the rights of third parties in divorce actions." *Thames, supra*, citing *Wiand v Wiand*, 178 Mich App 137, 146; 443 NW2d 464 (1989). However, the trial court did not determine the rights of plaintiff's mother, the rights of her mother were not contested during trial, and plaintiff's mother did not intervene in the action. Therefore, we find plaintiff's argument to be without merit.

Plaintiff finally contends that the trial court clearly erred by including plaintiff's American Funds IRA in the marital estate. We disagree and find that the record supports the trial court's finding. A careful review of the transcript indicates that it was uncontroverted that plaintiff contributed to an IRA held by American Funds before the marriage. Plaintiff testified that before the marriage she made contributions to her American Funds IRA, which was worth \$7,500 at the time of the marriage. However, the testimony and evidence is conflicting regarding whether plaintiff contributed to the American Funds IRA during the marriage. According to plaintiff she made two contributions of \$2,000 during the marriage to an IRA held with the Berger Fund. Defendant, on the other hand, testified that plaintiff indicated to him that she paid \$2,000 every year into the American Funds IRA during the marriage. The parties' tax returns

indicated that an IRA contribution was made in 1986, but that no contributions were made from 1987 through 1991.

However, during trial, the court barred plaintiff from presenting any evidence that the American Funds IRA was premarital property because she failed to identify this asset as premarital property during discovery. Therefore, consistent with the court's discovery sanction, which this Court upheld, in pertinent part, we find that the trial court did not clearly err in considering the entire value of the American Funds IRA as part of the marital estate.

Plaintiff also claims, as part of her first and third arguments on appeal, that the division of marital property was inequitable. We disagree. Having concluded that the trial court did not clearly err in its findings, we must make a determination whether the ultimate dispositional ruling was fair and equitable in light of the facts. *Byington, supra* at 109, citing *Sands, supra* at 34. Reversal of the ultimate disposition is proper only if we are left with the firm conviction that the distribution was inequitable. *Id.*

Plaintiff first contends that the property division was inequitable because the court failed to award her a greater share of marital property to compensate for the loss of her separate property. As we have already indicated, however, in light of the trial court's discovery sanctions and this Court's affirmation of those sanctions, the court should not, in equity, be required to increase plaintiff's share of the marital assets to reflect the loss of plaintiff's alleged separate property which in the end occurred because of her failure to comply during discovery. A party's attempt to conceal assets is a relevant consideration in determining an equitable division of property. *Sands, supra* at 36; *Draggoo, supra* at 430.

Plaintiff also contends that an equal division of the marital property ignores that she is unable to work and fails to give consideration to the life status of the parties and/or defendant's fault. Again, we have previously concluded that there is no indication in the record that plaintiff is unable to work in some capacity and the evidence supports a finding that both parties contributed to the breakdown of the marriage. When the division of assets is considered together with the trial court's award of spousal support, we find an equal award of marital property was justified in this case. See *Jansen v Jansen*, 205 Mich App 169, 172-173; 517 NW2d 275 (1994) ("the alimony award goes hand in glove with the property distribution").

Plaintiff further contends that the trial court's division of the marital property was inequitable because the court awarded defendant the income producing assets, while awarding plaintiff the assets with limited income potential. Specifically, plaintiff complains that the trial court should have awarded her the interest in Innerwoods and defendant's pension. However, the record indicates that defendant materially participated in the development of the Innerwoods properties, and thus, we do not find that the trial court's award of the asset to defendant was an abuse of discretion. *Byington, supra*.

Likewise, we do not find the trial court's award of defendant's pension to him to be unfair or inequitable, especially when the trial court awarded plaintiff the IRA's. Accordingly, the trial court did not abuse its discretion in awarding defendant his pension. *Id.* Moreover, the trial court awarded plaintiff other income producing property, including rental property and various stocks.

#### IV.

Plaintiff's fourth claim is that the trial court's valuation of defendant's Wayne County defined benefit pension was clearly erroneous. We disagree. Both parties presented expert testimony regarding the valuation of defendant's defined benefit pension and the trial court adopted defendant's expert's valuation. In light of the facts of this case, and given that the valuations of the parties' expert witnesses differed extensively, we cannot say that the trial court's finding was clearly erroneous. The trial court is in the best position to determine the proper date of retirement and method of valuation based on the circumstances of the case. *Heike v Heike*, 198 Mich App 289, 292; 497 NW2d 220 (1993). "[N]o one valuation method is required; rather, the trial court, when valuing a pension, is obligated to reach a fair and equitable division of the property in light of all the circumstances." *Id.* (emphasis in original). The trial court's valuation fell within the range of the valuations set forth by the expert testimony. See *Jansen, supra* at 170-171 ("where a trial court's valuation of a marital asset is within the range established by the proofs, no clear error is present"). Therefore, we cannot say with a definite and firm conviction that the trial court made a mistake in adopting defendant's expert's valuation. *McNamara, supra*. Again, the trial court is in the best position to judge the credibility of witnesses. *Draggoo, supra* at 429, citing *Thames, supra*.

#### V.

Plaintiff's fifth claim is that the trial court clearly erred in its award of spousal support and child support. We disagree. Plaintiff contends that the trial court erred by basing the spousal support calculation solely on defendant's employment income and failing to consider his additional income from referral fees and the Innerwoods investment. We disagree and find that it was just and reasonable not to consider any expected income from Innerwoods or referral fees in the calculation of spousal support. The evidence indicates that Innerwoods is not projected to generate additional income other than what was previously accounted for in the equity value awarded to defendant in the property division. Therefore, any expected income from Innerwoods was already accounted for through the property division. Furthermore, there is no indication in the record that defendant's current income included referral fees and there is no evidence of any such outstanding or future fees. Under these circumstances, we are not firmly convinced that the trial court's award of spousal support in this case was inequitable. *Sparks, supra* at 151-152. The spousal support award in this case equalized the parties' income, thus satisfying its purpose of balancing the incomes and needs of the parties. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000).

Plaintiff also contends that the trial court failed to make findings on the relevant spousal support factors. We disagree. "The trial court should make specific findings of fact regarding those factors that are relevant to the particular case." *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (1993), citing *Sparks, supra* at 159. The trial court made specific findings as to the pertinent factors in this case when addressing either spousal support or the property division. "[T]he alimony award goes hand in glove with the property distribution." *Jansen,*



*supra* at 172. Further, in this case, the court acknowledged that it based its decision on the spousal support factors<sup>3</sup> and also noted the respective positions of the parties.

Plaintiff next contends that the trial court clearly erred in its award of child support because it failed to consider defendant's additional income. We disagree. "The award of child support rests in the sound discretion of the trial court, and its exercise of discretion is presumed to be correct." *Thames, supra* at 306, citing *Hoke v Hoke*, 162 Mich App 201, 206; 412 NW2d 694 (1987). "In determining the amount of child support, the trial court is to consider the needs of the child and the parents' abilities to pay." *Id.* Further, "[a] trial court's failure to consider the defendant's financial status as a whole is clear error." *Good v Armstrong*, 218 Mich App 1, 5; 554 NW2d 14 (1996). In determining the amount of child support, a trial court is not limited to the parent's actual income. *Id.* at 5-6. Rather, the trial court may also consider a party's assets and his income potential. *Id.* However, "while a parent's duty to support his child is not limited to his income, the duty imposed must be fair and all relevant aspects of the parent's financial status must be considered." *Id.* at 6.

Plaintiff contends that the trial court clearly erred by failing to consider defendant's income from referral fees and Innerwoods in determining the amount of child support. We disagree. As already determined, there is no indication in the record that defendant was owed any outstanding referral fees or that he expected any future referral fees. There is also no indication in the record that defendant presently received any amount from Innerwoods or when he would receive the expected amounts. To the contrary, the testimony indicated that the lots owned by Innerwoods were undeveloped, would require substantial costs to develop and were not on the market. Given the contingencies surrounding the Innerwoods development, we find that the trial court did not abuse its discretion by failing to include the Innerwoods receivable and/or equity as income for the purpose of determining the child support amount. See *Good, supra* at 7. If and when defendant receives the amounts, plaintiff could then move to modify the child support award.

## VI.

Plaintiff's sixth claim is that the trial court abused its discretion in awarding defendant attorney fees absent a showing of defendant's need or plaintiff's ability to pay. We disagree. We review an award of attorney fees for an abuse of discretion. *Jansen, supra* at 173, citing *Milligan v Milligan*, 197 Mich App 665, 671; 496 NW2d 394 (1992). "[A]ttorney fees in divorce actions are not recoverable as of right." *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). Rather, "[a] party to a divorce action may be ordered to pay the other party's reasonable attorney fees if the record supports a finding that such financial assistance is necessary to enable the other party to defend or prosecute the action." *Id.*, citing

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<sup>3</sup> Relevant factors to be considered in awarding spousal support are "(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of the property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity." *Thames, supra* at 308.

MCL 552.13; *Thames*, *supra* at 310. “This Court has *also* held that an award of legal fees is authorized where the party requesting payment of the fees has been forced to incur them as a result of the other party’s unreasonable conduct in the course of litigation.” *Stackhouse*, *supra*. (emphasis added) See also *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995). Thus, financial need is not the only basis for the grant of attorney fees. *Milligan*, *supra* at 670-671. “A trial court has the discretion to award such fees as are necessary and reasonable, and a court’s determination in this regard will not be reversed on appeal absent an abuse of that discretion.” *Stackhouse*, *supra*, citing *Thames*, *supra*; *Zecchin v Zecchin*, 149 Mich App 723, 732; 386 NW2d 652 (1986).

In this case, the record indicates that plaintiff’s conduct was unreasonable. Defendant testified that the parties went to court over the past seventeen months on “many, many” occasions resulting from motions filed due to plaintiff’s continual violation of the court’s orders and that plaintiff’s total inability to cooperate caused him to expend “outrageous” attorney fees. The testimony also indicated that sixty-eight motions were filed by defendant as a result of plaintiff’s failure to abide by the trial court’s orders. Thus, the record supports the trial court’s finding that plaintiff’s unreasonable conduct caused defendant to incur greater expense. The trial court is also in the best position to make this determination. Accordingly, we find that, in light of plaintiff’s conduct during the course of the proceedings, the trial court did not abuse its discretion in awarding defendant attorney fees.

We would also note that although this Court previously upheld the trial court’s \$5,543 sanction of plaintiff for her failure to comply with discovery, the record is replete with instances showing that plaintiff’s unreasonable conduct continued after this Court’s resolution of the issues on the first appeal. We further note that plaintiff’s unreasonable and uncooperative conduct throughout the course of these proceedings was not just limited to her refusal to permit discovery. For example, following the first appeal, plaintiff failed to pay court ordered expenses, such as payments on the home equity loan, refused to cooperate with defendant regarding parenting time with the minor children, and failed to deliver property to defendant pursuant to court orders and the judgment of divorce, each of which caused defendant to file additional motions for orders to compel and show cause plaintiff. Interestingly, defendant testified that many of the motions filed as a result of plaintiff’s refusal to cooperate were withdrawn after the issues were resolved by the parties just prior to the hearings on the motions, further evidencing the trial court’s conclusion that plaintiff’s position unnecessarily caused defendant to incur attorney fees throughout this case. The record further indicates that as of the October 24, 2000, defendant had accumulated over \$99,000 in attorney fees and costs. By November 5, 2001, defendant’s pre-judgment attorney fees exceeded \$180,000.<sup>4</sup> While we recognize that the trial court also previously sanctioned plaintiff by not allowing her to introduce certain evidence at trial, plaintiff’s continued dilatory conduct on discovery or other matters prolonged the proceedings more than two years, causing defendant to incur greater expense. Thus, as previously noted, we are unable to conclude that the trial court abused its discretion in awarding defendant attorney fees.

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<sup>4</sup> Although the record does not specifically indicate the amount of attorney fees accumulated as a result of plaintiff’s unreasonable and uncooperative conduct, defendant requested that plaintiff be assessed only that portion of the fees attributable to her unreasonable conduct.

Affirmed.

/s/ Christopher M. Murray

/s/ Janet T. Neff

/s/ Michael J. Talbot